

**E-FILED on** 2/12/07

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re FOUNDRY NETWORKS, INC.  
DERIVATIVE LITIGATION

No. C-06-05598 RMW

ORDER APPOINTING LEAD PLAINTIFF  
AND APPROVING SELECTION OF LEAD  
COUNSEL

This Document Relates To:  
  
ALL ACTIONS.

**[Re: Docket Nos. 20, 26]**

Before the court are motions for appointment of lead plaintiff and approval of selection of lead counsel by (1) Sunanda A. Desai, Jean McDonald and David M. Jackson ("Desai Group"); and (2) Doug Edrington.<sup>1</sup> The Desai Group and Edrington oppose each other's motion. The court heard oral argument on the motions on Friday, February 2, 2007. The court has read the moving and responding papers and considered the arguments of counsel. For the reasons set forth below, the court appoints the Desai Group as lead plaintiffs and the law firms of Keller Rohrback and Schiffrin & Barroway as co-lead counsel for the above-captioned action.

**I. ANALYSIS**

**A. Appointment of Lead Plaintiff**

Foundry Networks, Inc. ("Foundry") has publicly announced that the accounting

<sup>1</sup> The plaintiffs also move to consolidate the actions. Because the court has already issued an order consolidating the actions pursuant to stipulation by the parties, that issue is moot.

1 measurement dates of certain stock option grants may differ from their recorded grant dates. The  
2 Desai Group plaintiffs filed shareholder complaints derivatively on behalf of Foundry on September  
3 12, 2006 alleging violations of federal and state laws based on Foundry's alleged backdating of stock  
4 options. Plaintiff Doug Edrington filed a derivative complaint on behalf of Foundry on October 31,  
5 2006 based on similar factual allegations.

6 Nothing presented by the parties indicates that either of the proposed lead plaintiff have  
7 "economic interests that are antagonistic to the interests of the class." *See Larson v. Dumke*, 900  
8 F.2d 1363, 1367 (9th Cir. 1989) (setting forth the criteria required of a lead plaintiff in a derivative  
9 action). The consolidated action is in its early stages and nothing indicates that either of the  
10 proposed lead plaintiff would not pursue the action diligently, vigorously, and conscientiously. *See*  
11 *id.* However, several factors weigh in favor of appointment of the Desai Group. The fact that the  
12 individual plaintiffs in the Desai Group have worked cooperatively together is some indication of  
13 their interest in vigorously pursuing the interest of those represented. In addition, although there is  
14 no presumption in favor of selecting the plaintiff with the largest financial stake as there is in cases  
15 under the Private Securities Litigation Reform Act, financial stake has some relevance to the  
16 plaintiff's interest in a derivative action and the likelihood that the plaintiff will pursue the derivative  
17 claims vigorously. Here, Edrington owns 666 shares of Foundry stock while each of the plaintiffs in  
18 the Desai Group owns a greater number, collectively owning at least 2,700 shares. Finally, although  
19 the quality of the pleadings is not a specific factor under *Larson*, Delaware courts have considered  
20 the quality of the pleadings as an indicator of which plaintiff will best serve the interest of the  
21 shareholder base as a whole. *TCW Tech. Ltd. P'ship v. Intermedia Commc'ns, Inc.*, 2000 WL  
22 1654504, \*4 (Del. Ch. 2000). Here, plaintiff Jackson's complaint appears to be marginally better  
23 tailored to the issues. Accordingly, the court appoints the Desai Group as lead plaintiffs.

#### 24 **B. Approval of Class Counsel**


25 Once the most adequate plaintiffs are selected, the "most adequate plaintiff[s] shall, subject  
26 to the approval of the court, select and retain counsel to represent the class." 15 U.S.C.  
27 § 78u-4(a)(3)(B)(v). The Desai Group seeks appointment of two co-lead counsel in addition to  
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1 separate liaison counsel.<sup>2</sup> Based on the resumes submitted to the court, all three law firms appear  
 2 highly qualified to serve as counsel in the present action. In its tentative ruling, the court questioned  
 3 the functional difference between lead counsel and liaison counsel. At oral argument, counsel for  
 4 the Desai Group informed the court that counsel had decided no liaison counsel will be necessary in  
 5 this action. The court further expressed some concern about duplication of costs if two law firms  
 6 were appointed to serve as co-lead counsel. Counsel for the Desai Group assured the court that the  
 7 two firms have worked together efficiently in the past and represented that they would not bill more  
 8 than would be billed with only one lead counsel. Based on counsel's representations, the court is  
 9 satisfied that appointment of the law firms of Keller Rohrbach and Schiffrin & Barroway as co-lead  
 10 counsel is appropriate in this matter.

## 11 II. ORDER

12 For the reasons set forth above, the court appoints the Desai Group as lead plaintiffs and the  
 13 law firms of Keller Rohrbach and Schiffrin & Barroway as co-lead counsel for the above-captioned  
 14 action.

15  
 16 DATED: 2/12/07

  
 17 RONALD M. WHYTE  
 United States District Judge

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 28 <sup>2</sup> Specifically, (1) Keller Rohrbach as co-lead counsel, (2) Schiffrin & Barroway as co-lead counsel, and (3) Bramson, Plutzik, Mahler & Birkhaeuser, LLP as liaison counsel.

1 **Notice of this document has been electronically sent to:**

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14 Counsel are responsible for distributing copies of this document to co-counsel that have not  
15 registered for e-filing under the court's CM/ECF program.

17 Dated: 2/12/07 SPT  
Chambers of Judge Whyte